IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/02/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.10726 of 2003

Raja Educational & Charitable
Trust,
rep. by its Chairman Mr.S.A.Raja,
Raja Nagar,
Vadakangulam-627 116,
Tirunelveli District. .. Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by its Secretary to Govt.,
(Health and Family Welfare Dept.),
Fort St. George,
Chennai-9.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the issuance of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.P.Ravishankar for
Ms.B.Saraswati

For Respondents : Mr.P.S.Sivashanmughasundaram,
Addl. Govt. Pleader.

:O R D E R

The petitioner-trust proposing to start a Medical College, applied to the Tamil Nadu Dr.M.G.R. Medical University (for brevity "the University") for the grant of Essentiality Certificate from the academic year 1988-89. As there was undue delay on the part of the University for passing orders on the request of the petitioner for the grant of Essentiality Certificate, the petitioner moved this Court in Writ Petition No.7480 of 1989 wherein this Court directed the University to consider the application of the petitioner

and pass appropriate orders on or before 30.11.1989. However, by order dated 20.11.1989, the University rejected the application of the petitioner for the grant of Essentiality Certificate pointing out certain deficiencies.

1.2. The petitioner had again approached the University by their letters dated 4.12.1989 and 9.12.1989 after complying with the deficiencies as pointed out by the University in their proceedings dated 20.11 .1989 and also filed Writ Petition No.739 of 1990 for a Mandamus to direct the University to consider the application of the petitioner for the grant of Essentiality Certificate and this Court by order dated 11.12.1991 directed the University to consider the application of the petitioner.
1.3. As per the direction of this Court dated 11.12.1991, made in Writ Petition No.739 of 1990, the University appointed an Inspection Committee consisting of Dr.M.G.Muthukumarasamy, Professor of Surgery, Raja Muthiah Medical College, Annamalai University and Dr.S.Vembar, Professor of Pharmacology, Raja Muthiah Medical College, Annamalai University to submit a report with regard to the issuance of Essentiality Certificate. The Inspection Committee visited the petitioner-trust on 13.3.1992 and reported certain deficiencies including the nonexistence of 300 bedded hospital in the campus of the petitioner-trust.

1.4. Therefore, the petitioner-trust after constructing 360 bedded hospital in the same campus again on 15.9.1997 applied for the grant of Essentiality Certificate to the respondents. As there was no response, the petitioner also sent reminders to the respondents on 27.1.l9 98, 21.2.1998, 28.10.1998 and 12.5.1999. Finally, the petitioner filed Writ Petition No.25325 of 2002 seeking a writ of Mandamus to direct the respondents to grant Essentiality Certificate and this Court by order dated 17.7.2002 directed the respondents herein to communicate their decision based on the report of the Inspection Team, who inspected the petitioner trust on 10.12.2001. But, again, the first respondent-Government by letter dated 24.12.2002 rejected the claim of the petitioner.

1.5. Even after receipt of the letter dated 24.12.2002, the petitioner again sent a representation to the respondents on 24.2.2003 explaining that all the deficiencies pointed out by the first respondent in their letter dated 24.12.2002 had been complied with. Complaining that no action was taken by the respondents from 24.2.2003, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the first respondent in Letter (D) No.1863 (Health and Family Welfare Department), dated 24.12.2002, quash the same and to direct the first respondent to grant Essentiality Certificate to the petitioner to establish "Raja Medical College", Kaval Kinaru, Tirunelveli District, Tamil Nadu, with 100 intake within a limited period.

2. Mr.P.S.Sivashanmughasundaram, learned Additional Government Pleader, appearing for the respondents, is not in a position to explain the steps taken by the respondents since 24.2.2003 till date viz., 23.2 .2004.

3. It is true that an institution or a management desirous of establishing a medical college has to obtain Essentiality Certificate from the

respective State Government or the Union Territory Administration, as the case may be. As per Para 3 of the Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993, (for short " the Regulation"), the requirement of Essentiality Certificate from the Government concerned is a condition precedent before granting recognition and the State Government alone is the Judge who could decide as to the location as well as to the compliance of requirements and infrastructure facilities for starting such medical college, vide State of Maharashtra v. Indian Medical Association, reported in (2002) 1 SCC 589 : AIR 2002 SC 302. But, at the same time, the Government while exercising such statutory power conferred under the Regulation cannot take their own sweet time to pass orders on the application for the issuance of Essentiality Certificate.

4. In the instant case, even though the petitioner had approached this Court for more than four occasions, time and again the respondents had pointed out some deficiencies or other, which were also reported to have been complied with by the petitioner and finally as represented by them on 24.2.2003 and thereafter, the entire issue was put into cold storage by the respondents. The laches on the part of the respondents to conduct a fresh inspection to verify the compliance of the deficiencies as pointed out by the inspection team of the respondents and to take a decision thereon, necessitated the petitioner once again to approach this Court in the present writ petition.

5. According to the petitioner, they had constructed 360 bedded hospital as required by the Inspection Committee sent by the University and complied with all the deficiencies as pointed out by the Inspection Team of the respondents.

6. In that view of the matter, without going into the reasons for rejection of the Essentiality Certificate as pointed out by the first respondent in their letter dated 24.12.2002, suffice it to direct the respondents to send an Inspection Committee to the petitioner-trust within four weeks from today, who shall submit a report within two weeks from the date of inspection; and if the Inspection Committee points out any deficiency, again the same shall be informed to the petitioner within two weeks from the date of receipt of the report; and on compliance of such further deficiency, the respondents shall pass appropriate orders within two weeks thereafter and report the compliance of the above directions to this Court after eight weeks. The writ petition is ordered accordingly. No costs.

Index : Yes
Internet: Yes

ATR

To,

1. The Secretary to Govt.,
(Health and Family Welfare Dept),
The Government of Tamil Nadu,
Fort St. George,
Chennai-9.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10.